

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35864

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 537
	)	
Plaintiff-Respondent,	)	Filed: July 22, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
SCOTT CHARLES HEAP,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy Hansen, District Judge.

Judgment of conviction and unified sentence of twenty-five years, with a minimum period of confinement of five years, for lewd conduct with a minor under sixteen, affirmed. Order relinquishing jurisdiction and denying motion to reduce sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, PERRY, Judge  
and GRATTON, Judge

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PER CURIAM

Scott Charles Heap was convicted of lewd conduct with a minor under sixteen, Idaho Code § 18-1508. The district court imposed a unified sentence of twenty-five years, with a minimum period of confinement of five years and retained jurisdiction. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Heap's sentence. At the jurisdictional review hearing, Heap made an oral request for reduction of his sentence pursuant to Idaho Criminal Rule 35, which the district court denied. Heap appeals, contending that the sentence is excessive and that the district court abused its discretion in relinquishing jurisdiction and failing to reduce his sentence.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Hernandez*, 122 Idaho 227, 230, 832 P.2d 1162, 1165 (Ct. App. 1992); *State v. Lee*, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990); *Toohill*, 103 Idaho at 567, 650 P.2d at 709. Therefore, a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that the district court did not abuse its discretion, and we therefore affirm the order relinquishing jurisdiction.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). Our focus on review is upon the nature of the offense and the character of the offender. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). Where a sentence is not illegal, the appellant must show that it is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution. *State v. Broadhead*, 120 Idaho 141, 145, 814 P.2d 401, 405 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992); *Toohill*, 103 Idaho at 568, 650 P.2d at 710.

Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing Heap's sentence, in relinquishing jurisdiction, or in denying his Rule 35

motion for reduction of the sentence. The judgment of conviction and sentence, the order relinquishing jurisdiction, and the order denying Heap's Rule 35 motion are affirmed.